

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AMAZON.COM, INC., a Delaware  
corporation,

Plaintiff,

v.

CYBERPOWER PTY, LTD., a foreign  
corporation, LEONID "LEO" RADVINSKY,  
an individual, ACTIVSOFT, INC., an Illinois  
corporation, and JOHN DOES 3-20,

Defendants.

No. C03-2620P

FIRST AMENDED COMPLAINT FOR  
TRADEMARK INFRINGEMENT,  
CYBERPIRACY, UNFAIR  
COMPETITION, AND UNFAIR  
BUSINESS PRACTICE

Jury Trial Demanded

Plaintiff Amazon.com, Inc. ("Amazon.com"), through its attorneys, alleges as follows:

**I. SUMMARY**

Defendants Cyberpower Pty., Ltd. ("Cyberpower"), Leonid "Leo" Radvinsky ("Radvinsky"), ActivSoft, Inc. and other unknown defendants are engaged in a marketing campaign in which they have been sending e-mails to consumers with forged "from" lines and other e-mail routing information, creating the impression that the e-mails are from Amazon.com. Defendants have intentionally used the AMAZON.COM® mark in the e-mail to cause the recipient to believe that the e-mail is from Amazon.com and/or to get past e-mail

1 filters. Defendants do not have permission to use the AMAZON.COM® mark and are not  
2 affiliated in any way with Amazon.com.

3 By this complaint, Amazon.com seeks to prevent consumer confusion and protect  
4 AMAZON.COM®, one of the world's best-known brands, from intentional infringement and  
5 cyberpiracy. Defendants have recently conducted an e-mail marketing campaign advertising  
6 "Free Grants," using e-mails that falsely claim that they are from "Amazon.com."

7 Defendants are using the AMAZON.COM® trademark in their e-mail marketing  
8 campaign to immediately convey to consumers an association with Amazon.com, to  
9 circumvent e-mail filters, and to unfairly trade on the reputation and goodwill of the  
10 AMAZON.COM® mark. Since commencing operations on the World Wide Web in 1995,  
11 Amazon.com's annual sales have grown to over \$3.9 billion, and Amazon.com has become a  
12 Fortune 500 company. With tens of millions of customers worldwide, Amazon.com is  
13 among the best-known and most popular Internet retailers.

14 Amazon.com has extensively promoted its business using the AMAZON.COM®  
15 mark, and Internet shoppers and consumers almost universally recognize AMAZON.COM®  
16 as a brand identifier for Amazon.com's websites and products. Consumers have a strong  
17 association between the AMAZON.COM® mark and Amazon.com's websites and the  
18 strength of the AMAZON.COM® trademark—one of Amazon.com's most valuable  
19 corporate assets.

20 Defendants' use of AMAZON.COM® in connection with their marketing of goods or  
21 services is likely to confuse consumers. Defendants' use of AMAZON.COM® will lead  
22 some consumers to conclude that Amazon.com is a partner, has a business relationship, or is  
23 somehow associated with defendants or their products.

24 Preventing this confusion will help protect consumers from deceptive and fraudulent  
25 e-mail practices, allowing consumers to make fully informed choices about where they are  
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1 shopping on the Internet, thereby promoting the consumer protection goals of the trademark  
2 and unfair competition laws. In this action, Amazon.com seeks to enjoin defendants from  
3 using the trade name and trademark AMAZON.COM® for the marketing and sale of their  
4 products. The unfair competition laws do not allow a latecomer to copy a mark and “free  
5 ride” on the goodwill associated with it. Myriad other names are available. A marketer  
6 should not be allowed to benefit from Amazon.com’s long term and extensive investment in  
7 AMAZON.COM® at the expense of Amazon.com and to the detriment of consumers.

## 8 **II. JURISDICTION AND VENUE**

9 1. This is a Complaint for violations of §§ 32 and 43 of the Lanham Act , 15  
10 U.S.C. § 1114(1) (Trademark Infringement), 15 U.S.C. § 1125(a) (False Designation of  
11 Origin, Unfair Competition), 15 U.S.C. § 1125(d) (Cyberpiracy Prevention), and for other  
12 claims arising under state law.

13 2. The Court has original subject matter jurisdiction over this action pursuant to  
14 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a). The Court has supplemental jurisdiction over the  
15 state law claims pursuant to 28 U.S.C. § 1367.

16 3. The Court has personal jurisdiction over the defendants because the  
17 defendants are located in and/or conduct business in this District. Also, the defendants have  
18 purposefully availed themselves of the opportunity to conduct commercial activities in this  
19 forum, and this Complaint arises out of those activities. E-mails sent from the defendants  
20 actively display, disseminate, and promote the infringing AMAZON.COM mark. The  
21 publication and dissemination of the infringing trademark in this District is causing ongoing  
22 injury to Amazon.com.

23 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c), because a  
24 substantial part of the events giving rise to the claim occurred, and continue to occur, in this  
25 District. The damage to Amazon.com described herein takes place in this District and  
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1 elsewhere.

### 2 **III. THE PARTIES**

3 5. Amazon.com is a Delaware corporation with its principal place of business in  
4 Seattle, Washington. On or about July 15, 1997, Amazon.com registered the trademark  
5 AMAZON.COM® with the United States Patent and Trademark Office.

6 6. On information and belief, defendant Cyberpower Pty., Ltd. (“Cyberpower”)  
7 is a foreign corporation. Cyberpower is or was the registered owner and operator of internet  
8 websites advertising “Free Grants,” including the websites <www.grantgiveaways.com>,  
9 <www.freegrantsnow.com>, <www.mygrantnow.org>, <www.securedgrant.com> and  
10 <www.yourfreegrant.com>. During the times referenced herein, Cyberpower promoted its  
11 websites, products and services through the sending of bulk, unsolicited e-mail, or “spam.”  
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13 7. On information and belief, defendant Leonid “Leo” Radvinsky (“Radvinsky”)  
14 is an individual residing in Illinois. Radvinsky is or was the registered owner and operator of  
15 internet websites advertising “Free Grants,” including the websites  
16 <www.grantgiveaways.com>, <www.freegrantsnow.com>, <www.mygrantnow.org>,  
17 <www.securedgrant.com> and <www.yourfreegrant.com>. During the times referenced  
18 herein, Radvinsky promoted his websites, products and services through the sending of bulk,  
19 unsolicited e-mail, or “spam.”  
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21 8. On information and belief, defendant ActivSoft, Inc. is an Illinois corporation  
22 with its principal place of business in Glenview, Illinois. ActivSoft is or was the registered  
23 owner and operator of internet websites advertising “Free Grants,” including the websites  
24 <www.grantgiveaways.com>, <www.freegrantsnow.com>, <www.mygrantnow.org>,  
25 <www.securedgrant.com> and <www.yourfreegrant.com>. During the times referenced  
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1 herein, Radvinsky promoted his websites, products and services through the sending of bulk,  
2 unsolicited e-mail, or “spam.”

3 9. Amazon.com is unaware of the true names and capacities of defendants sued  
4 herein as DOES 3-20, and therefore sues these defendants by such fictitious names.  
5 Amazon.com will amend this complaint to allege their true names and capacities when  
6 ascertained. Amazon.com is informed and believes and therefore alleges that each of the  
7 fictitiously named defendants is responsible in some manner for the occurrences herein  
8 alleged, and that Amazon.com’s injuries as herein alleged were proximately caused by such  
9 defendants. These fictitiously named defendants, along with defendants Cyberpower,  
10 Radvinsky and ActivSoft are herein referred to as “defendants.”

11 10. The actions alleged herein to have been undertaken by the defendants were  
12 undertaken by each defendant individually, were actions that each defendant caused to occur,  
13 were actions that each defendant authorized, controlled, directed, or had the ability to  
14 authorize, control or direct, and/or were actions in which each defendant assisted,  
15 participated or otherwise encouraged, and are actions for which each defendant is liable.  
16 Each defendant aided and abetted the actions of the defendants set forth below, in that each  
17 defendant had knowledge of those actions, provided assistance and benefited from those  
18 actions, in whole or in part. Each of the defendants was the agent of each of the remaining  
19 defendants, and in doing the things hereinafter alleged, was acting within the course and  
20 scope of such agency and with the permission and consent of other defendants.

#### 21 **IV. THE AMAZON.COM® TRADEMARK**

22 11. The term “Amazon.com” is not only the name of Plaintiff’s company, but the  
23 most important and easily recognized identifier of the goods and services it offers. There is a  
24 particularly close association among consumers between Amazon.com the business, the  
25 AMAZON.COM® mark, and the products and services offered under the Amazon.com  
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1 designation. For millions of consumers, the name “Amazon.com” has come to represent  
2 wide selection, fast delivery, fair pricing, and excellent security for Internet transactions.  
3 Courts in the United States and Greece have entered judgments for Amazon.com that attest to  
4 the fame and/or the strong association between the AMAZON.COM® mark and the services  
5 offered by Amazon.com.

6 12. AMAZON.COM® mark is one of the best known trademarks on the Internet.  
7 For instance:

- 8 • Tens of millions of customers from over 220 countries have made purchases through  
9 the Amazon.com Site. Every one of these purchasers has, at a minimum, seen the  
10 AMAZON.COM® mark on the website, on the packaging in which his or her order  
11 was shipped, and in e-mail communications that confirm each order.
- 12 • Many millions more have come to know the AMAZON.COM® mark through  
13 Amazon.com’s extensive advertising in a variety of media. Since 1996, Amazon.com  
14 has spent hundreds of millions on advertising—all of which makes prominent use of  
15 the AMAZON.COM® mark—on television and radio, and in newspapers and  
16 magazines.
- 17 • According to the MMXI Europe May 2000 European Audience Ratings Report, the  
18 Amazon.com, Amazon.co.uk, and Amazon.de sites reach more consumers in Europe  
19 than any other site on the Internet.
- 20 • A recent survey by Media Metrix, a company that monitors traffic to popular e-  
21 commerce websites, identified the Amazon.com Site as one of the most frequently  
22 visited shopping sites on the Internet and the largest seller of books (ahead of sites  
23 operated by Barnes & Noble and Borders), music (ahead of sites operated by  
24 Columbia House and BMG Music), toys, software (ahead of sites operated by  
25 <Bestbuy.com> and <CompUSA.com>) and video (ahead of <BlockBuster.com>).

- 1 • Amazon.com's achievements have generated tremendous attention in the media—  
2 thousands of articles have been written about the company over the last few years.  
3 Feature stores in *Fortune*, *Business Week*, *The New York Times*, *USA Today*,  
4 *Advertising Age* and *Wired* have touted the company's success and have identified it  
5 as a leading force in the "New Economy."
- 6 • The Amazon.com name is found on literally thousands of Internet websites. Not only  
7 do important Internet retailers (e.g., AOL.com) carry Amazon.com "banner" ads on  
8 their homepages, but more than 800,000 other website operators around the world  
9 have become Amazon.com "Associates," and are thus permitted to link to the  
10 Amazon.com Site and to display the AMAZON.COM® mark on their websites.
- 11 • A recent study by Interbrand Group, a leading international brand consultancy  
12 company, ranked the 100 most valuable brands in the world, all of which Interbrand  
13 identified as having a value in excess of \$1 billion. Interbrand's study included the  
14 AMAZON.COM® mark, ranking its value above such well-known trade names as  
15 "Hilton®" and "Guinness®." Another Interbrand study recognized the  
16 AMAZON.COM® mark's value in the year 2001, ranking its value above 24 other  
17 trade names such as "Burger King®" and "Wall Street Journal®."

18 13. The AMAZON.COM® mark is famous by virtue of its inherent  
19 distinctiveness and substantial secondary meaning as a designation of the source of the  
20 products Amazon.com sells and by its continuous and broad use for virtually the entire life of  
21 the Internet as a commercial medium. The AMAZON.COM® mark is registered in the  
22 European Union and in 72 individual countries, and has over 400 additional registration  
23 applications pending all over the world. AMAZON.COM® is a registered trademark with  
24 the United States Patent and Trademark Office for a computerized on-line search and  
25 ordering service featuring the wholesale and retail distribution of books, music, motion  
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1 pictures, multimedia products and computer software in the form of printed books,  
2 audiocassettes, videocassettes, compact disks, floppy disks, CD ROMs, and direct digital  
3 transmission.

4 14. The AMAZON.COM® mark is particularly well known among Internet users,  
5 the trading areas and channel of trade used by both Amazon.com and defendants. There are  
6 no similar marks in common commercial use. A recent review of the database maintained by  
7 the United States Patent and Trademark Office reveals not a single registration for any other  
8 mark that included both “amazon” and “com.”

9 15. Amazon.com is one of the best-known Internet retailers in the world today.  
10 Jeff Bezos (“Bezos”), the company’s founder, was a pioneer in the use of the Internet as a  
11 medium of commerce. In 1995, Bezos created an Internet website (“Amazon.com Site”) that  
12 permitted consumers around the world to purchase books on-line. Amazon.com was one of  
13 the first corporations to make the name of its business identical to the domain name from  
14 which its business operates—such that anyone using the Internet to find its website need only  
15 remember the name of the company.

16 16. Since its inception, the Amazon.com Site has continuously operated from the  
17 Internet address <www.amazon.com>. When Amazon.com opened its cyber-doors, its site  
18 primarily featured books, which is still an integral part of Amazon.com’s business. Since  
19 then, Amazon.com has expanded its operations to include an even broader selection of  
20 products, offering full line of goods ranging from computer products and electronics to toys  
21 to compact discs and movies on videotape and DVD.

22 17. Since at least as early as 1995, Amazon.com has used the trademark  
23 AMAZON.COM® to promote its business and its websites.



1 **V. DEFENDANTS' ILLEGAL ACTS**

2 18. On information and belief, sometime on or before May 6, 2003, defendants  
3 conducted an extensive e-mail campaign. As part of that campaign, defendants, acting  
4 together and in concert, created and sent large volumes of e-mail messages advertising their  
5 websites and "Free Grant" offers. Some of the e-mails were designed so that they appeared  
6 to be sent from Amazon.com, and used the AMAZON.COM® mark in the e-mail header as  
7 the "from" address. *See* Exhibit A. Many of the e-mails also used the AMAZON.COM®  
8 mark in the e-mail header as the "to" address, causing the e-mails to be sent to  
9 Amazon.com's servers, as well as to the numerous addressees listed as "cc's."

10 19. Amazon.com did not provide permission to defendants to use its  
11 AMAZON.COM® trademark for any reason, including their e-mail marketing campaign.

12 20. On information and belief, defendants intentionally adopted the  
13 AMAZON.COM® mark to trade on the fame and goodwill associated with the  
14 AMAZON.COM® mark, and to evade customers' anti-spam filters specifically designed to  
15 permit the receipt of e-mail from Amazon.com.

16 21. Defendants' use of the AMAZON.COM® mark is likely to cause consumer  
17 confusion, mistake, and deception. This likelihood of confusion, mistake, and deception is  
18 even greater because both Amazon.com and defendants operate their businesses over the  
19 Internet.

20 22. Defendants' use of the AMAZON.COM® mark is likely to lead consumers to  
21 mistakenly conclude that the e-mail from defendants was exclusively or jointly sent by,  
22 licensed or certified by, or otherwise sponsored or approved by Amazon.com, or that  
23 Cyberpower is somehow otherwise affiliated, connected, or associated with Amazon.com.  
24 Consumers are likely to be misled as to the true source, sponsorship, or affiliation of the e-  
25 mail.  
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23. On information and belief, through their use of the AMAZON.COM® mark, defendants have intentionally and with knowledge sought to cause consumer confusion, mistake, and deception.

**COUNT I**

## TRADEMARK INFRINGEMENT UNDER LANHAM ACT 15 U.S.C. § 1114

24. Amazon.com realleges paragraphs 1-23 of this Complaint as if fully set forth herein.

25. Defendants' use of the AMAZON.COM® mark to promote, market, or sell products and services constitutes trademark infringement pursuant to 15 U.S.C. § 1114. Defendants' intentional and willful infringement of the AMAZON.COM® registered trademark has caused and will continue to cause damage to Amazon.com, and is causing irreparable harm to Amazon.com for which there is no adequate remedy at law. Defendants are directly, contributorily, and/or vicariously liable for these actions.

## COUNT II

## FALSE DESIGNATION OF ORIGIN UNDER LANHAM ACT 15 U.S.C. § 1125(a)

26. Amazon.com realleges paragraphs 1-25 of this Complaint as if fully set forth herein.

27. Defendants have used and continue to use AMAZON.COM® in connection with goods or services, in commerce, in a manner that is likely to cause confusion, mistake, or deception as to the origin, sponsorship, or approval of their goods or services. Defendants are directly, contributorily, and/or vicariously liable for these actions. Amazon.com has been damaged by these acts in an amount to be proved at trial. Amazon.com is also entitled under the Lanham Act to injunctive and equitable relief against defendants.

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**COUNT III**

**CYBERPIRACY PREVENTION UNDER LANHAM ACT 15 U.S.C. § 1125(d)**

28. Amazon.com realleges paragraphs 1-27 of this Complaint as if fully set forth herein.

29. Defendants' bad faith intent to profit from use of AMAZON.COM®, by sending e-mail messages that state they are from AMAZON.COM® that are confusingly similar to Amazon.com's distinctive marks, constitutes cyberpiracy under 15 U.S.C. § 1125(d). Defendants' cyberpiracy of AMAZON.COM® has caused and will continue to cause damage to Amazon.com, in an amount to be proved at trial, and is causing irreparable harm to Amazon.com for which there is not an adequate remedy at law. Defendants are directly, contributorily, and/or vicariously liable for these actions.

**COUNT IV**

**UNFAIR COMPETITION UNDER LANHAM ACT 15 U.S.C. § 1125(a)**

30. Amazon.com realleges paragraphs 1-29 of this Complaint as if fully set forth herein.

31. Defendants' use of the AMAZON.COM® mark to promote, market, or sell their products or services, including on their website, constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a). Defendants' use of the AMAZON.COM® mark is likely to cause confusion, mistake, and deception among consumers. Defendants' unfair competition has caused and will continue to cause damage to Amazon.com, and is causing irreparable harm to Amazon.com for which there is no adequate remedy at law. Defendants are directly, contributorily, and/or vicariously liable for these actions.

1 **COUNT V**

2 **UNFAIR BUSINESS PRACTICE UNDER WASHINGTON STATE LAW**

3 32. Amazon.com realleges paragraphs 1-31 of this Complaint as if fully set forth  
4 herein.

5 33. Defendants' use of AMAZON.COM® to promote, market, or sell products  
6 and services, including on their website, constitutes an Unfair Business Practice pursuant to  
7 R.C.W. 19.86. Defendants' use of the AMAZON.COM® mark is an unfair or deceptive  
8 practice occurring in trade or commerce that impacts the public interest and has caused injury  
9 to Amazon.com. Defendants' unfair business practice has caused and will continue to cause  
10 damage to Amazon.com, and is causing irreparable harm to Amazon.com for which there is  
11 no adequate remedy at law.

12 **COUNT VI**

13 **TRESPASS TO CHATTELS**

14 34. Amazon.com realleges paragraphs 1-33 of this Complaint as if fully set forth  
15 herein.

16 35. The computers, computer networks and computer services used to operate  
17 Amazon.com's business are the personal property of Amazon.com.

18 36. By spoofing Amazon.com's domain name in the e-mail "to" line and using  
19 false or imaginary e-mail addresses, defendants intentionally directed their e-mail to  
20 Amazon.com's computer, computer networks and computer services. This resulted in  
21 Amazon.com's computer systems being required to receive and process a significant amount  
22 of junk e-mail, utilizing the limited resources of Amazon.com's systems and making those  
23 resources unavailable for authorized uses.

24 37. Additionally, defendants knew that their bulk e-mailing practices inevitably  
25 lead to a significant portion of their e-mail being undeliverable. When an e-mail is  
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undeliverable, “bounce” messages are generated to advise the sender of this fact. By spoofing Amazon.com’s domain name in the e-mail header, defendants insured that Amazon.com’s computer equipment – rather than defendants’ own equipment – was burdened by the innumerable bounce messages resulting from the e-mail campaign.

38. Defendants have knowingly, intentionally and without authorization used and intentionally trespassed upon Amazon.com’s property.

39. As a result of defendants’ actions, Amazon.com has been damaged in an amount to be proven at trial.

## COUNT VII

### UNFAIR COMPETITION

40. Amazon.com realleges paragraphs 1-39 of this Complaint as if fully set forth herein.

41. Defendants’ use of the AMAZON.COM® mark to promote, market, or sell their products constitutes Unfair Competition. Defendants’ use of the AMAZON.COM® mark is likely to cause confusion, mistake, and deception among consumers. Defendants have acted in bad faith and/or deliberately or willfully to infringe upon the AMAZON.COM® mark. Defendants are directly, contributorily, and/or vicariously liable for these actions.

WHEREFORE, plaintiff respectfully prays that this Court:

1. Issue a permanent injunction, enjoining and prohibiting defendants, or their agents, servants, employees, officers, attorneys, successors and assigns from:

(A) Using AMAZON.COM® trademark, or any version thereof, in connection with the description, marketing, promotion, advertising, or sale of any products or services, including defendants’ e-mails or websites; and

(B) Infringing Amazon.com’s AMAZON.COM® trademark;

2. Order an award of damages in an amount to be determined at trial;
3. Order an award of treble damages, in an amount to be determined at trial, pursuant to R.C.W. Ch. 19.86;
4. Order an award of treble damages as provided by Section 35(a) of the Lanham Act;
5. Order an award of attorney's fees and costs as provided by Section 35(a) of the Lanham Act and R.C.W. Ch. 19.86;
6. Order an award of punitive damages to be determined at trial; and
7. Any other or further relief that the Court deems appropriate.

## **VI. JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issue in this case.

DATED this 29th day of January, 2004.

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